

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC. CIVIL APPLN.(CONTEMPT PETITION) No 403 of 1986

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HEIRS OF DECEASED HARJIBHAI MAVAJIBHAI

Versus

HIRALAL BECHARDAS PANCHAL

Appearance:

MR PV NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT and

MR.JUSTICE R.BALIA.

Date of decision: 01/10/97

ORAL JUDGEMENT (Per Y.B. Bhatt J.)

1. This is a contempt application invoking the contempt jurisdiction of this court, which has been on the final hearing board since 22nd September 1997. Learned counsel for the parties are not present.

2. This application alleges that the respondents have violated the interim orders passed by the trial court in Civil Suit No.94/86 dated 21st January 1986, as also the orders passed by Deputy Collector dated 4th April 1986, in certain proceedings before the revenue authorities.

3. The respondents have in the affidavit in reply not only emphatically denied the averments made in the application, but have in detail asserted contrary facts to establish that the petitioners have, in the present contempt application, set out only selected facts which were convenient to their purpose, and have deliberately suppressed other and material facts. The said affidavit-in-reply highlights the fact that it was the respondents who had filed an earlier suit viz. Regular Civil suit No.87/86 in the court of Civil Judge (Senior Division), Ahmedabad Rural, and had in the said suit at an earlier point of time i.e. on 17th January 1986, obtained an interim order against the present petitioners. The said interim order which was limited when initially granted, has been extended from time to time and was operative upto the date of the petition.

4. It is pertinent to note that the petitioners herein have not filed any affidavit-in-rejoinder with a view to controvert the assertions made in the affidavit-in-reply.

5. In view of this state of affairs, we are of the opinion that firstly the petitioners have not stated the complete facts, and have also not referred to the earlier suit filed by the present respondents. Furthermore, it also appears from the record that it was the respondents who were in actual possession of the disputed property, and had in fact constructed 10 shops thereon, and it was on account of interference sought to be committed by the present petitioners that the present respondents approached the civil court at an earlier point of time and had obtained an earlier interim relief.

6. Even otherwise, if the petitioners seriously wished to contend that it was the respondents who had committed breach of the injunction order passed in the subsequent suit filed by the present petitioners, they could and ought to have approached the concerned court by invoking the provisions of Order 39, Rule 2A, CPC.

6.1 In any case, this application raises many questions of fact which cannot be decided without

recording evidence.

7. We further note that the cross suits and the incidents alleged to have taken place all pertain to the year 1986. By this time the said suit should have been decided, and so also the appeals, in case the same had been preferred by the concerned party.

8. Under such circumstances we do not find any justification for examining the present matter in greater detail. This application is, therefore, rejected. Rule is discharged with no order as to costs.
